IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

H.C.P.No.232/2007

Ravi @ Mattu Ravi .. Petitioner

Vs.

1.State rep. By its
Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2.Commissioner of Police,
Greater Chennai, Egmore, Chennai .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus directing the respondents to produce the detenu Ravi @ Mattu Ravi son of Ranganathan, who is now detained in Central Prison, Chennai in pursuance of the detention order passed by the 2nd respondent dated 20.11.2006 in 286/BDFGISSV/2006 before this Court and set him at liberty.

For Petitioner: Mr.S.Swamidoss Manoharan

For Respondent: Mr.Babu Muthu Meeran, Addl.PP.

O R D E R

R.BANUMATHI, J.

Challenge in this HCP is to the detention order whereby the petitioner was detained branding him as 'Goonda' under Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2.The detenu had earlier come to adverse notice in five cases - Cr.No.502/2004 [V1 Villivakkam P.S. under Ss.341, 323 & 506(2) IPC]; Cr.No.449/2005 [V1 Villivakkam P.S. under Ss.341, 384 & 506

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(2) IPC]; Cr.No.597/2006 [V1 Villivakkam P.S. under Ss.323 & 307 IPC]; Cr.No.756/2006 [V1 Villivakkam P.S. under Ss.756 IPC] and Cr.No.759/2006 [V1 Villivakkam P.S. under Ss.341, 384 & 506(2) IPC]. Ground case relates to the occurrence on 12.11.2006, where the detenu is alleged to have committed robbery, relieving the defacto complainant of Rs.700/-, regarding which a case was registered in Cr.No. 763/2006 under Ss.341, 392 r/w 397, 336 and 506(2) IPC. The petitioner was arrested on 13.11.2006 and was remanded to judicial custody. On being satisfied that if the detenu comes out on bail he would act in a manner prejudicial to the maintenance of public order, the detention order was clamped on the petitioner.

3.Though several contentions were raised in the grounds and argued as well, we do not deem it necessary to go into each and every one of them, since in our view, the HCP is to be allowed on the ground of non-application of mind as to the number of cases in which the detenu was arrested and lack of cogent materials before the Detaining Authority to satisfy himself as to the imminent possibility of the detenu being released on bail.

4.The relevant part of the detention order which deals with this aspect of the matter is under :-

> "4.I am aware that Thiru.Ravi @ Mattu Ravi is in remand in V-1 Villivakkam Police Station Crime No.763/2006 and he has not moved any bail application so far. I am also aware that there is a real possibility of his coming out on bail by filing a bail application before the same Court or Higher Courts since in similar cases bails are granted by the same Court or Higher Courts".

It is seen that the Detaining Authority's satisfaction consists of two parts viz., (i)the detenu is in custody in Cr.No.763/2006; (ii) there is a real possibility of his coming out on bail for the above case by filing a bail application.

5.Drawing attention of Court to various pages of paper book, the learned Counsel for the petitioner has contended that the detenu was under arrest and in custody not only in the ground case Cr.No.763/2006, but also in other cases and there is no proper application of mind in this regard. It is seen from the Arrest Intimation [page 213 of the paper book] that the detenu was arrested in connection with Cr.Nos.763 of 2006, 756/2006 and 759/2006. In the Arrest Memo given to the detenu's wife Vasanthi [page 215 of the paper book], it was informed that the detenu was arrested in Cr.Nos.763/2006 and 759/2006. Request for remand was sought for for all three cases viz., Cr.Nos.763 of 2006, 756/2006 and 759/2006 [page 217 of the paper book]. As seen from the remand order, the petitioner was remanded only in ground case Cr.No.763/ 2006. When the petitioner was arrested in all three cases, and

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Remand Request was also made for all three cases, material on record shows as if the petitioner was remanded to judicial custody only in the ground case viz., Cr.No.763/2006. There is no indication of the awareness of the Detaining Authority that the detenu was arrested in connection with other Cr.Nos.756/2006 and 759/2006. There is non application of mind on the part of the Detaining Authority on this relevant fact, which in our opinion would vitiate the detention order.

6.In fact, the petitioner had sent representation requesting to furnish remand orders in Cr.Nos.756/2006 and 759/2006 and inform him how he is involved in the adverse case in Cr.No.756/2006. The authority has glossed over the same by sending reply stating that the other cases are only referred cases and not relied upon. In our view, the detenu had a right to know whether he was actually remanded or not in other cases.

7.The fact that the detenu was arrested in connection with other cases is not reflected in the grounds of detention. Even if the detenu is released on bail in the ground case Cr.No.763/2006, since the detenu was arrested in other cases as well, by filing bail application in the ground case Cr.No.763/2006, there is no imminent possibility of the detenu being released on bail.

8.After elaborate consideration of various case laws on this aspect, in 2005 (2) LW Crl.946 [K.Thirupathi Vs. District Magistrate and District Collector, Tiruchirapalli District & another], Justice P.Sathasivam, speaking for the Full Bench has answered the point of reference as under:-

> "26.There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.
>
> 27.In the case of a person in custody, a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of reliable material placed before him (a)that there is a real possibility of his being released on bail, and (b)if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court".

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9.In 2006(1) SCC Crl 593 [T.V.Saravanan @ S.A.R.Prasana Venkatachariar Chaturvedi] and in 2006(3) SCC Crl 371 [A.Shanthi Vs.Govt. Of T.N. and others], the Supreme has quashed the detention order on the ground that there was no cogent material before the Detaining Authority on the basis on which the Detaining Authority satisfied itself that the detenu was likely to be released on bail. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention.

10.Applying the ratio laid down by the Supreme Court, we are satisfied that the order of detention cannot be upheld in this case. This HCP is allowed and the detention order is quashed. The detenu is directed to be set at liberty forthwith unless he is required in connection with any other case.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2.The Commissioner of Police,
Greater Chennai, Egmore, Chennai

3.The Public Prosecutor, High Court, Madras

4.The Superintendent Central Prison, Chennai.

5. The Joint Secretary to Government,
Public (Law and Order) Department,
Fort St George, Chennai 9.

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